

* * **§ 362 INFORMATION COVER SHEET** * *

DEBTOR

Case No:

MOTION #:

MOVANT

CHAPTER:

Certification of Attempt to Resolve the Matter Without Court Action:

Moving counsel hereby certifies that pursuant to the requirements of LR 4001(a)(2), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.

Date: _____

Signature: _____

Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: _____

NOTICE SERVED ON: Debtor(s) _____; Debtor's counsel _____; Trustee _____;

DATE OF SERVICE: _____

MOVING PARTY'S CONTENTIONS:

The EXTENT and PRIORITY of LIENS:

1st

2nd

3rd

4th

Other:

Total Encumbrances:

APPRAISAL of OPINION as to VALUE:

DEBTOR'S CONTENTIONS:

The EXTENT and PRIORITY of LIENS:

1st

2nd

3rd

4th

Other:

Total Encumbrances:

APPRAISAL of OPINION as to VALUE:

**TERMS of MOVANT'S CONTRACT
with the DEBTOR(S):**

Amount of Note:

Interest Rate:

Duration:

Payment per Month:

Date of Default:

Amount in Arrears:

Date of Notice of Default:

SPECIAL CIRCUMSTANCES:

SUBMITTED BY:

**DEBTOR'S OFFER of "ADEQUATE
PROTECTION" for MOVANT :**

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SPECIAL CIRCUMSTANCES:

SUBMITTED BY:

SIGNATURE: _____

Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
Bryan A. Lindsey, Esq.
Nevada Bar No. 10662
Schwartz Law Firm, Inc.
626 S. Third Street
Las Vegas, Nevada 89101
Telephone: (702) 385-5544
Facsimile: (702) 385-2741
Attorneys for the Debtors

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:) Case No. 09-26633-BAM
)
Anthony V. Mosley,) Chapter 11
)
) Date of Hearing: March 2, 2010
Debtor.) Time of Hearing: 9:00 a.m.
)

**DEBTOR'S OPPOSITION TO THE MOTION FOR RELIEF FROM
AUTOMATIC STAY FILED BY WELLS FARGO BANK, N.A.
AND COUNTERMOTION FOR ATTORNEYS' FEES**

Anthony V. Mosley, the debtor in the above-captioned proceeding (the "**Debtor**"), files this Opposition (the "**Opposition**") to Wells Fargo Bank, N.A. (the "**Secured Creditor**") Motion for Relief from Automatic Stay (the "**Motion**") and Countermotion (the "**Countermotion**") for attorney's fees and in support of the Opposition and Countermotion, states as follows:

FACTS AND ARGUMENT

1. On September 4, 2009, the Debtor filed his petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, *et al.* as amended (the "**Bankruptcy Code**").

1 2. The Secured Creditor filed its Motion on January 25, 2010, to foreclose on one of
2 the Debtor's residential properties located at 5925 Jerry Drive, Las Vegas, Nevada 89108 (the
3
4 **"Property"**).

5 3. On October 23, 2009, this Court granted the Debtor's motion to value collateral
6 (the **"Motion to Value"**) and entered an Order valuing the Property at \$63,000.00. Since that
7 date, the Debtor made mortgage payments based upon this new value in the amount of \$416.42.
8 Copies of the mortgage payments from October 2009 – January 2010 are attached hereto as
9
10 **Exhibit A.**

11
12 4. The Secured Creditor seeks to obtain relief from the automatic stay but has
13 offered no basis as to why the automatic stay should be lifted. Indeed, the Secured Creditor's
14 pleading appears to be a form, which was filed as a matter of procedure, not based on the facts of
15 this case.
16

17
18 5. Separately, confirmation of the Debtor's Plan of Reorganization is scheduled for
19 March 16, 2010. Perhaps the Secured Creditor's concerns would be better addressed at
20 confirmation.
21

22 **COUNTERMOTION FOR ATTORNEY'S FEES**

23 6. The Debtor filed the Motion to Value and is current on his post-petition mortgage
24 payments on the Property. The Motion to Value was approved by the Court on October 23,
25 2009.
26

27 7. Despite the fact that the Debtor is current on his post-petition mortgage payments,
28 the Secured Creditor filed its Motion for Relief From Automatic Stay.
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1 8. Therefore, the Debtor requests that the Secured Creditor be directed to reimburse
2 the Debtor for the attorney's fees related to forcing the Debtor to bear the costs related to
3 opposing the Secured Creditor's Motion and for having to appear at the hearing.
4

5 WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) denying
6 the Motion; (ii) awarding the Debtor his attorney's fees for having to respond to the Secured
7 Creditor's Motion and for having to appear at the hearing; and (iii) granting such other and
8 further relief as is just and proper.
9

10 Dated this 18th day of February, 2010.
11

12
13 /s/Samuel A. Schwartz
14 Samuel A. Schwartz, Esq.
15 Nevada Bar No. 10985
16 Bryan A. Lindsey, Esq.
17 Nevada Bar No. 10662
18 The Schwartz Law Firm, Inc.
19 626 South Third Street
20 Las Vegas, Nevada 89101
21 Telephone: (702) 385-5544
22 Facsimile: (702) 385-2741
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent on February 16, 2010, via the Electronic Court Filing System, to the following:

MICHAEL R. BROOKS on behalf of Creditor WASHINGTON FEDERAL SAVINGS
jsallade@brooksbaauer.com

MICHAEL W. CHEN on behalf of Creditor U.S. Bank National Association, as Trustee for BNC Mortgage Loan Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 c/o Chase Home Finance, LLC
yvette@ccfirm.com

EDWARD M. MCDONALD on behalf of U.S. Trustee U.S. TRUSTEE - LV - 11
edward.m.mcdonald@usdoj.gov

KRISTIN A. SCHULER-HINTZ on behalf of Creditor U.S. Bank, N.A. as Trustee Home Equity Asset Trust 2005-8, Select Portfolio Servicing
nvbkcourt@mccarthyholthus.com, bknotice@mccarthyholthus.com

CINDY LEE STOCK on behalf of Creditor EMC MORTGAGE COMPANY
bk-clstock@cox.net

U.S. TRUSTEE - LV - 11
USTPRegion17.lv.ecf@usdoj.gov

GREGORY L. WILDE on behalf of Creditor BANK OF AMERICA
bk@wildelaw.com

LES ALLEN ZIEVE on behalf of Creditor Ocwen Loan Servicing, LLC
jsimpkins@zievelaw.com

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent on February 16, 2010 via Regular Mail, to the following:

AMERICAN HOME MORTGAGE SERVICING, INC.
4875 BELFORT ROAD SUITE 130
JACKSONVILLE, FL 32256

1 BAC Home Loans Servicing, LP
2 c/o Prober & Raphael
3 20750 Ventura Blvd.
4 Suite 100
5 Woodland Hills, CA 91364

6 RECOVERY MANAGEMENT SYSTEMS CORPORATION
7 25 S.E. SECOND AVENUE
8 INGRAHAM BUILDING, SUITE 1120
9 MIAMI, FL 33131-1605

10 JOHN D SCHLOTTER on behalf of Creditor Litton Loan Servicing
11 1544 OLD ALABAMA RD
12 ROSWELL, GA 30076

13 /s/ Bryan A. Lindsey
14 Bryan A. Lindsey
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